

# HOUSE BILL No. 1021

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-5-9; IC 3-7; IC 3-11; IC 3-11.5-4-12; IC 3-11.7-5-2; IC 3-12; IC 3-14-2-31; IC 35-41-4-2.

**Synopsis:** Absentee voting. Requires an individual who votes an absentee ballot by mail to provide identifying documentation. Restricts who may assist a voter in applying for an absentee ballot and who may transmit a completed application to the circuit court clerk. Requires the circuit court clerk to compare the signature on an absentee ballot application to the signature on the voter's registration record. Provides that a voter who will be absent from the county on election day is not entitled to vote an absentee ballot by mail. Requires a court or the state recount commission to order a special election if the court or commission finds that pervasive fraud, tampering, or misconduct that occurred during the election raises a reasonable doubt regarding the integrity of the results of the election. Provides that a person who does certain acts with respect to an absentee ballot application commits a Class D felony. Provides that the statute of limitations period for prosecution of a felony violation of the vote fraud statute is seven rather than five years.

**Effective:** July 1, 2004.

**Brown C**

December 4, 2003, read first time and referred to Committee on Elections and Apportionment.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1021

A BILL FOR AN ACT to amend the Indiana Code concerning elections.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 3-5-9 IS ADDED TO THE INDIANA CODE AS  
2       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2004]:

4       **Chapter 9. Requirements for Voters to Provide Identifying**  
5       **Information**

6       **Sec. 1. As used in this chapter, "identifying documentation"**  
7       **refers to any of the following:**

8           (1) A copy of a current and valid piece of identification  
9           containing a photograph of the voter.

10          (2) A copy of any of the following that shows the current name  
11          and address of the voter:

12           (A) A current utility bill.

13           (B) A current bank statement.

14           (C) A current government check.

15           (D) A current paycheck.

16           (E) A current government document.

17       **Sec. 2. An individual must provide identifying documentation in**

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the following circumstances:

(1) As provided in IC 3-7-33-4.5.

(2) When a voter votes an absentee ballot under IC 3-11-10-24.

Sec. 3. (a) An individual required to provide identifying documentation under IC 3-7-33-4.5 must file the documentation with the county voter registration office.

(b) An individual required to provide identifying documentation under section 2(2) of this chapter must file the documentation with the circuit court clerk.

SECTION 2. IC 3-7-27-20, AS AMENDED BY P.L.209-2003, SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 20. (a) This section applies to a county that maintains voter registration information in a computerized system.

(b) The county voter registration office shall prepare an entry in the computerized system that accurately reflects the information set forth in the original affidavit of registration and, if the applicant was required to provide **identifying** documentation under IC 3-7-33-4.5, whether the required documentation has been provided.

(c) If the **identifying** documentation ~~required under IC 3-7-33-4.5~~ **described in IC 3-5-9-1** has been provided, the entry must include the following:

(1) The date the **identifying** documentation was filed with the county voter registration office.

(2) Whether the **identifying** documentation was filed with the county voter registration office:

(A) by a precinct election board after the person voted in person at the polling place;

(B) by the county election board after the person applied to cast an absentee ballot; or

(C) by the applicant as part of the original filing of the application to register to vote, or in a subsequent filing received by the county voter registration office.

(3) A brief description of the type of **identifying** documentation provided. The election division shall provide each county voter registration office with a suggested coding system for identifying the types of **identifying** documentation.

(d) However, the county voter registration office is only required to enter a voter's voting history for the previous ten (10) years if that history is available.

(e) The county voter registration office is not required to prepare a duplicate paper copy of a registration properly entered into the

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computerized system.

(f) The computerized system must be able to generate lists of voters organized alphabetically and by precinct of residence.

(g) This section expires January 1, 2006.

SECTION 3. IC 3-7-33-4.5, AS ADDED BY P.L.209-2003, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4.5. ~~(a) This section applies after December 31, 2003.~~

~~(b)~~ **(a)** Except as provided in subsection ~~(c)~~, **(b)**, this section applies to an individual who:

(1) submits an application to register to vote by mail under IC 3-7-22; and

(2) has not previously voted in:

(A) a general election in Indiana (or a special election for federal office in Indiana); or

(B) a general election (or a special election for federal office) in the county where the individual has submitted an application under this chapter if a statewide voter registration system is not operational in accordance with the requirements of IC 3-7-26 and 42 U.S.C. 15483 on the date the application is received by the county voter registration office.

~~(c)~~ **(b)** This section does not apply to an individual who complies with the requirements in any of the following:

(1) The individual submits an application to register to vote by mail under this chapter and includes with that mailing ~~a copy of:~~

~~(A) a current and valid photo identification; or~~

~~(B) a current utility bill, bank statement, government check, paycheck, or government document that shows the name and address of the voter.~~

**identifying documentation described in IC 3-5-9-1.**

(2) The individual submits an application to register to vote by mail under this chapter that includes the individual's:

(A) Indiana driver's license number; or

(B) last four (4) digits of the individual's Social Security number;

and the county voter registration office or election division matches the information submitted by the applicant with an existing Indiana identification record bearing the same number, name, and date of birth set forth in the voter registration application.

(3) The individual is an absent uniformed services voter or overseas voter.

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(4) The individual is entitled to vote other than in person under the federal Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee-1(b)(2)(B)(ii)) due to a determination by the election division that a permanent or temporarily accessible polling place cannot be provided for the individual.

(5) The individual is entitled to vote other than in person under any other federal law.

~~(d)~~ (c) When a county voter registration office receives a voter registration application by mail, the office shall determine whether the applicant is subject to the requirements to provide ~~additional~~ **identifying** documentation under this section and 42 U.S.C. 15483.

~~(e)~~ (d) As required by 42 U.S.C. 15483, a county voter registration office shall administer the requirements of this section in a uniform and nondiscriminatory manner.

~~(f)~~ (e) If the county voter registration office determines that the applicant:

(1) is not required to submit ~~additional~~ **identifying** documentation under this section; or

(2) has provided the **identifying** documentation required under this section;

the county voter registration office shall process the application in accordance with section 5 of this chapter.

~~(g)~~ (f) If the county voter registration office determines that the applicant is required to submit ~~additional~~ **identifying** documentation under this section and 42 U.S.C. 15483, the office shall process the application under section 5 of this chapter and, if the applicant is otherwise eligible to vote, add the information concerning this documentation to the voter's computerized registration entry under IC 3-7-27-20(c).

~~(h)~~ (g) The county voter registration office shall remove the notation described in subsection ~~(g)~~ (f) after the voter votes in an election for a federal office.

SECTION 4. IC 3-11-4-2, AS AMENDED BY P.L.126-2002, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) A voter who wants to vote by absentee ballot must apply to the county election board for an official absentee ballot.

(b) **Only the following may assist a voter in completing an absentee ballot application:**

(1) **An individual caring for the voter, if the voter is confined.**

(2) **A member of the voter's household.**

(3) **The voter's attorney in fact.**

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(4) An individual designated by the circuit court clerk to provide assistance under this subsection.

An individual assisting a voter in completing an absentee ballot application may not sign the application unless the voter is unable to sign the application.

(c) If an individual assists a voter in completing an absentee ballot application, all of the following must be indicated on the application:

(1) The name of the individual.

(2) The status of the individual as described in subsection (b) that authorizes the individual to provide the assistance.

(3) Whether the individual signed the application for the voter.

(d) If an individual applies for or assists in the completion of an application for an absentee ballot as the properly authorized attorney in fact for a voter, the attorney in fact must attach a copy of the power of attorney to the application.

SECTION 5. IC 3-11-4-4, AS AMENDED BY P.L.126-2002, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) Applications may be made:

(1) in person;

(2) by fax transmission; or

(3) by mail;

on application forms furnished by the county election board or approved by the commission.

(b) Application forms shall:

(1) be furnished to all central committees in the county ~~no~~ not later than:

(A) June 15, for a general election or a special election ordered under IC 3-12-8-17 or IC 3-12-11-18 following the primary election; or

(B) January 15, for a primary election or a special election ordered under IC 3-12-8-17 or IC 3-12-11-18 following the general election;

(2) be:

(A) mailed; or

(B) transmitted by fax;

upon request, to a voter applying by mail, by telephone, or by fax; and

(3) be delivered to a voter in person who applies at the circuit court clerk's office.

(c) The county election board shall:

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(1) accept; and  
 (2) transmit;  
 applications for absentee ballots under subsection (a) by fax. A county election board shall accept an application for an absentee ballot transmitted by fax even though the application is delivered to the county election board by a person other than the person submitting the application.

**(d) Only the following may fax, mail, or hand deliver a completed absentee ballot application to the circuit court clerk or the office of the board of elections and registration (whichever is applicable):**

- (1) The voter.**
- (2) An individual caring for the voter, if the voter is confined.**
- (3) A member of the voter's household.**
- (4) The voter's attorney in fact.**

SECTION 6. IC 3-11-4-17.5, AS AMENDED BY P.L.209-2003, SECTION 114, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17.5. (a) Upon receiving an application for an absentee ballot, the county election board shall **do both of the following:**

- (1) Determine if whether** the applicant is a voter of the precinct in which the applicant resides, according to the records of the county voter registration office.
- (2) Compare the voter's signature on the application with the voter's signature on the voter's registration record.**

**(b) The county election board shall deny an application if any of the following apply:**

- (1) The applicant is not a voter of the precinct according to the registration record. ~~for if~~**
- (2) The signature of the voter on the application does not match the signature of the voter on the voter's registration record. This subdivision does not apply if the application was signed for the voter by an individual authorized to assist the voter in completing the application under section 2(b) of this chapter.**
- (3) The application as completed and filed does not otherwise comply with this chapter.**

~~the county election board shall deny the application:~~

~~(b)~~ **(c)** This subsection applies ~~after December 31, 2003,~~ to an absentee ballot application submitted by an absent uniformed services voter or an overseas voter. In accordance with 42 U.S.C. 1973ff-1(d), if the application is denied, the county election board shall provide the

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voter with the reasons for the denial of the application. Unless the voter is present when the board denies the application, the board shall send a written notice stating the reasons for the denial to the voter. The notice must be sent:

(1) not later than forty-eight (48) hours after the application is denied; and

(2) to the voter at the address at which the voter requested that the absentee ballot be mailed.

~~(c) This subsection applies after December 31, 2003.~~ (d) If the county election board determines that the applicant is a voter of the precinct under subsection (a), the board shall then determine whether:

(1) the applicant was required to file ~~any additional identifying~~ documentation under ~~IC 3-7-33-4.5~~; **IC 3-5-9**; and

(2) the applicant has filed this documentation ~~according to the records of with:~~

**(A) the county voter registration office (if the documentation is required by IC 3-7-33-4.5); or**

**(B) the circuit court clerk (if the documentation is required by IC 3-5-9-2(2)).**

If the applicant has not filed ~~the required identifying~~ documentation, the county election board shall approve the application if the application otherwise complies with this chapter. The board shall add a notation to the application and to the record compiled under section 17 of this chapter indicating that the applicant will be required to provide ~~additional identifying~~ documentation to the ~~county voter registration appropriate~~ office under ~~IC 3-7-33-4.5~~ **this section** before the absentee ballot may be counted.

~~(d)~~ (e) If the applicant:

(1) is a voter of the precinct according to the registration record;

(2) states on the application that the applicant resides at an address that is within the same precinct but is not the same address shown on the registration record; and

(3) after December 31, 2005, provides a voter identification number on the application to permit transfer of registration under IC 3-7-13-13;

the county election board shall direct the county voter registration office to transfer the applicant's voter registration address to the address within the precinct shown on the application. The applicant's application for an absentee ballot shall be approved if the applicant is otherwise eligible to receive the ballot under this chapter.

SECTION 7. IC 3-11-4-18, AS AMENDED BY P.L.209-2003, SECTION 116, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2004]: Sec. 18. (a) If a voter satisfies any of the following, the county election board shall, at the request of the voter, mail the official ballot, postage fully prepaid, to the voter at the address stated in the application:

~~(1) The voter will be absent from the county on election day.~~

~~(2) (1)~~ The voter will be absent from the precinct of the voter's residence on election day because of service as **any of the following:**

(A) A precinct election officer under IC 3-6-6.

(B) A watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10.

(C) A challenger or pollbook holder under IC 3-6-7. ~~or~~

(D) A person employed by an election board to administer the election for which the absentee ballot is requested.

~~(3) (2)~~ The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury.

~~(4) (3)~~ The voter is a voter with disabilities.

~~(5) (4)~~ The voter is an elderly voter.

~~(6) (5)~~ The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury.

~~(7) (6)~~ The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

~~(8) (7)~~ The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(b) ~~This subsection applies after December 31, 2003. If The county election board mails an absentee ballot to a voter required to file additional documentation with the county voter registration office before voting by absentee ballot under this chapter, the board shall include a notice to the voter in the envelope mailed to the voter under section 20 of this chapter. The notice must inform the voter that the voter must file the additional identifying documentation required under IC 3-7-33-4.5 described by IC 3-5-9-1 with:~~

~~(1) the county voter registration office (if the documentation is required by IC 3-7-33-4.5); or~~

~~(2) the circuit court clerk (if the documentation is required by IC 3-5-9-2(2));~~

~~not later than noon on election day for the absentee ballot to be counted. The commission shall prescribe the form of this notice under IC 3-5-4-8.~~

(c) The ballot shall be mailed:

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(1) on the day of the receipt of the voter's application; or  
 (2) not more than five (5) days after the date of delivery of the  
 ballots under section 15 of this chapter;  
 whichever is later.

(d) In addition to the ballot mailed under subsection (c), the county  
 election board shall mail a special absentee ballot for overseas voters.

(e) The ballot described in subsection (d):

(1) must be mailed:

(A) on the day of the receipt of the voter's application; or

(B) not more than five (5) days after the date of delivery of the  
 ballots under section 13(b) of this chapter;

whichever is later; and

(2) may not be mailed after the absentee ballots described by  
 section 13(a) of this chapter have been delivered to the circuit  
 court clerk or the clerk's authorized deputy.

(f) This subsection applies after December 31, 2005. As required by  
 42 U.S.C. 15481, an election board ~~must~~ **shall** establish a voter  
 education program (specific to a paper ballot or optical scan ballot card  
 provided as an absentee ballot under this chapter) to notify a voter of  
 the effect of casting multiple ballots for a single office.

(g) This subsection applies after December 31, 2005. As provided  
 by 42 U.S.C. 15481, when an absentee ballot is mailed under this  
 section, the mailing must include:

(1) information concerning the effect of casting multiple votes for  
 an office; and

(2) instructions on how to correct the ballot before the ballot is  
 cast and counted, including the issuance of replacement ballots.

SECTION 8. IC 3-11-8-25, AS AMENDED BY P.L.209-2003,  
 SECTION 134, IS AMENDED TO READ AS FOLLOWS  
 [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) After a voter has passed the  
 challengers or has been sworn in, the voter shall be admitted to the  
 polls. Upon entering the polls, the voter shall announce the voter's  
 name to the poll clerks or assistant poll clerks. A poll clerk, an assistant  
 poll clerk, or a member of the precinct election board shall require the  
 voter to write the following on the poll list:

(1) The voter's name.

(2) The voter's current residence address.

(b) The poll clerk, an assistant poll clerk, or a member of the  
 precinct election board shall:

(1) ask the voter to provide the voter's voter identification  
 number;

(2) tell the voter the number the voter may use as a voter

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1 identification number; and

2 (3) explain to the voter that the voter is not required to provide a  
3 voter identification number at the polls.

4 (c) ~~This subsection applies after December 31, 2003:~~ The poll clerk  
5 or assistant poll clerk shall examine the list provided under IC 3-7-29-1  
6 or IC 3-11-3-18 to determine if the county election board has indicated  
7 that the voter is required to provide ~~additional personal identification~~  
8 **identifying documentation** under 42 U.S.C. 15483 and ~~IC 3-7-33-4.5~~  
9 **IC 3-5-9** before voting in person. If the list (or a certification  
10 concerning absentee voters under IC 3-11-10-12) indicates that the  
11 voter is required to present this ~~identification documentation~~  
12 before voting in person, the poll clerk shall advise the voter that the voter must  
13 present **to the poll clerk** a piece of identification described in  
14 subsection (d) ~~to the poll clerk: IC 3-5-9-1.~~

15 (d) ~~This subsection applies after December 31, 2003:~~ As required  
16 by 42 U.S.C. 15483, a voter described by ~~IC 3-7-33-4.5~~ who has not  
17 complied with ~~IC 3-7-33-4.5~~ before appearing at the polls on election  
18 day must present one (1) of the following documents to the poll clerk:

19 (1) a current and valid photo identification; or

20 (2) a current utility bill; bank statement; government check;  
21 paycheck; or government document that shows the name and  
22 address of the voter.

23 (e) ~~This subsection applies after December 31, 2003:~~ (d) If a voter  
24 presents a document under subsection (d); **identifying documentation**,  
25 the poll clerk shall add a notation to the list indicating the type of  
26 document presented by the voter. The election division shall prescribe  
27 a standardized coding system to classify documents presented under  
28 this subsection for entry into the county voter registration system.

29 (f) ~~This subsection applies after December 31, 2003:~~ (e) If a voter  
30 required to present **identifying documentation** under subsection (d) is  
31 unable to present the documentation to the poll clerk while present in  
32 the polls, the poll clerk shall notify the precinct election board. The  
33 board shall provide a provisional ballot to the voter under IC 3-11.7-2.

34 (g) ~~This subsection applies after December 31, 2003:~~ (f) The  
35 precinct election board shall advise the voter that the voter may file a  
36 copy of ~~the identifying~~ documentation with the county voter  
37 registration office to permit the provisional ballot to be counted under  
38 IC 3-11.7.

39 (h) (g) This subsection does not apply to a precinct in a county with  
40 a computerized registration system whose inspector was:

41 (1) furnished with a list certified under IC 3-7-29; and

42 (2) not furnished with a certified photocopy of the signature on

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the affidavit of registration of each voter of the precinct for the comparison of signatures under this section.

In case of doubt concerning a voter's identity, the precinct election board shall compare the voter's signature with the signature on the affidavit of registration or any certified copy of the signature provided under IC 3-7-29. If the board determines that the voter's signature is authentic, the voter may then vote. If either poll clerk doubts the voter's identity following comparison of the signatures the poll clerk shall challenge the voter in the manner prescribed by section 21 of this chapter.

~~(f)~~ **(h)** If, in a precinct governed by subsection ~~(h)~~: **(g)**:

- (1) the poll clerk does not execute a challenger's affidavit; or
- (2) the voter executes a challenged voter's affidavit under section 22 of this chapter or had executed the affidavit before signing the poll list;

the voter may then vote.

~~(g)~~ **(i)** This section expires January 1, 2006.

SECTION 9. IC 3-11-10-4.5, AS ADDED BY P.L.209-2003, SECTION 140, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4.5. ~~(a) This section applies after December 31, 2003.~~

~~(b)~~ **(a)** Upon receipt of an absentee ballot from a voter required to provide additional information to the county voter registration office under ~~IC 3-7-33-4.5~~, **IC 3-5-9**, the county election board shall contact:

- (1) the county voter registration office (if the documentation is required by IC 3-7-33-4.5); or**
- (2) the circuit court clerk (if the documentation is required by IC 3-5-9-2(2));**

to determine if the additional information has been filed ~~with the office~~ by the voter.

~~(c)~~ **(b)** If the voter has filed the information, ~~with the county voter registration office~~, the county election board shall add a notation to the application indicating that the required information has been filed and that the absentee ballot may be counted if the ballot otherwise complies with this article.

~~(d)~~ **(c)** If the voter has not filed the information, ~~with the county voter registration office~~, the county election board shall add a notation on the application filed by a voter described under subsection ~~(c)~~ **(b)** and on the envelope provided under this chapter reading substantially as follows:

"INSPECTOR: AS OF (insert date absentee ballot application approved) THIS VOTER WAS REQUIRED TO FILE

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1 ~~ADDITIONAL IDENTIFYING DOCUMENTATION WITH~~  
 2 ~~THE COUNTY VOTER REGISTRATION OFFICE~~ BEFORE  
 3 THIS BALLOT MAY BE COUNTED. CHECK THE POLL LIST  
 4 AND COUNTY ELECTION BOARD CERTIFICATION TO SEE  
 5 IF THE VOTER HAS FILED THIS ~~INFORMATION.~~  
 6 **DOCUMENTATION.** IF NOT, PROCESS AS A  
 7 PROVISIONAL BALLOT IF THIS BALLOT OTHERWISE  
 8 COMPLIES WITH INDIANA LAW."

9 SECTION 10. IC 3-11-10-12, AS AMENDED BY P.L.209-2003,  
 10 SECTION 142, IS AMENDED TO READ AS FOLLOWS  
 11 [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) Each county election board  
 12 shall have all absentee ballots delivered to the precinct election boards  
 13 at their respective polls on election day.

14 (b) The absentee ballots shall be delivered during the hours that the  
 15 polls are open and in sufficient time to enable the precinct election  
 16 boards to vote the ballots during the time the polls are open.

17 (c) ~~This subsection applies after December 31, 2003:~~ Along with the  
 18 absentee ballots delivered to the precinct election boards under  
 19 subsection (a), each county election board shall provide a list certified  
 20 by the circuit court clerk. This list must state the name of each voter  
 21 subject to ~~IC 3-7-33-4.5~~ **IC 3-5-9** who:

22 (1) filed the **identifying** documentation required by ~~IC 3-7-33-4.5~~  
 23 ~~with the county voter registration office~~ **IC 3-5-9** after the  
 24 printing of the certified list under IC 3-7-29 or the poll list under  
 25 IC 3-11-3-18; and

26 (2) as a result, is entitled to have the voter's absentee ballot  
 27 counted if the ballot otherwise complies with this title.

28 (d) ~~This subsection applies after December 31, 2003:~~ If the county  
 29 election board is ~~notified~~ **determines** not later than 3 p.m. on election  
 30 day ~~by the county voter registration office~~ that a voter subject to  
 31 ~~IC 3-7-33-4.5~~ **IC 3-5-9** and not identified in the list certified under  
 32 subsection (c) has filed documentation ~~with the office~~ that complies  
 33 with ~~IC 3-7-33-4.5; IC 3-5-9~~, the county election board shall transmit  
 34 a supplemental certified list to the appropriate precinct election board.  
 35 If the board determines that the supplemental list may not be received  
 36 before the closing of the polls, the board shall:

37 (1) attempt to contact the precinct election board to inform the  
 38 board regarding the content of the supplemental list; and

39 (2) file a copy of the supplemental list for that precinct as part of  
 40 the permanent records of the board.

41 (e) This subsection applies to a special write-in absentee ballot  
 42 described in:

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1 (1) 42 U.S.C. 1973ff for federal offices; and

2 (2) IC 3-11-4-12(d) for state offices.

3 If the county election board receives both a special write-in absentee  
4 ballot and the regular absentee ballot described by IC 3-11-4-12 from  
5 the same voter, the county election board shall reject the special  
6 write-in ballot and deliver only the regular absentee ballot to the  
7 precinct election board.

8 SECTION 11. IC 3-11-10-16, AS AMENDED BY P.L.209-2003,  
9 SECTION 143, IS AMENDED TO READ AS FOLLOWS  
10 [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) If the inspector finds under  
11 section 15 of this chapter that:

12 (1) the affidavit is properly executed;

13 (2) the signatures correspond;

14 (3) the absentee voter is a qualified voter of the precinct;

15 (4) the absentee voter is registered and ~~after December 31, 2003,~~  
16 is not required to file additional information with the county voter  
17 registration office under ~~IC 3-7-33-4.5;~~ **IC 3-5-9;**

18 (5) the absentee voter has not voted in person at the election; and

19 (6) in case of a primary election, if the absentee voter has not  
20 previously voted, the absentee voter has executed the proper  
21 declaration relative to age and qualifications and the political  
22 party with which the absentee voter intends to affiliate;

23 then the inspector shall open the envelope containing the absentee  
24 ballots so as not to deface or destroy the affidavit and take out each  
25 ballot enclosed without unfolding or permitting a ballot to be unfolded  
26 or examined.

27 (b) The inspector shall then hand the ballots to the judges who shall  
28 deposit the ballots in the proper ballot box and enter the absentee  
29 voter's name on the poll list, as if the absentee voter had been present  
30 and voted in person. If the voter has registered and voted under  
31 IC 3-7-36-14, the inspector shall attach to the poll list the circuit court  
32 clerk's certification that the voter has registered.

33 (c) If an absentee ballot is opened under this section in a precinct  
34 using voting machines, the precinct election board shall prepare  
35 certificates and memoranda under IC 3-12-2-6 that distinguish the  
36 votes cast by absentee ballots from votes cast on voting machines.

37 SECTION 12. IC 3-11-10-16.5, AS ADDED BY P.L.209-2003,  
38 SECTION 144, IS AMENDED TO READ AS FOLLOWS  
39 [EFFECTIVE JULY 1, 2004]: Sec. 16.5. ~~(a) This section applies after~~  
40 ~~December 31, 2003.~~

41 ~~(b)~~ If the inspector finds under section 16(a) of this chapter that the  
42 voter has not filed the ~~additional information identifying~~

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**documentation** required to be filed ~~with the county voter registration office~~ under ~~IC 3-7-33-4.5, IC 3-5-9~~, but that all of the other findings listed under section 16(a) of this chapter apply, the inspector shall direct that the absentee ballot be processed as a provisional ballot under IC 3-11.7.

SECTION 13. IC 3-11-10-24, AS AMENDED BY P.L.126-2002, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 24. (a) Except as provided in subsection (b), a voter who satisfies any of the following is entitled to vote by mail:

~~(1) The voter will be absent from the county on election day.~~

~~(2) (1)~~ The voter will be absent from the precinct of the voter's residence on election day because of service as **any of the following:**

(A) A precinct election officer under IC 3-6-6.

(B) A watcher under IC 3-6-8, IC 3-6-9, or IC 3-6-10.

(C) A challenger or pollbook holder under IC 3-6-7. ~~or~~

(D) A person employed by an election board to administer the election for which the absentee ballot is requested.

~~(3) (2)~~ The voter will be confined on election day to the voter's residence, to a health care facility, or to a hospital because of an illness or injury.

~~(4) (3)~~ The voter is a voter with disabilities.

~~(5) (4)~~ The voter is an elderly voter.

~~(6) (5)~~ The voter is prevented from voting due to the voter's care of an individual confined to a private residence because of illness or injury.

~~(7) (6)~~ The voter is scheduled to work at the person's regular place of employment during the entire twelve (12) hours that the polls are open.

~~(8) (7)~~ The voter is eligible to vote under IC 3-10-11 or IC 3-10-12.

(b) A voter with disabilities who:

(1) is unable to make a voting mark on the ballot or sign the absentee ballot secrecy envelope; and

(2) requests that the absentee ballot be delivered to an address within Indiana;

must vote before an absentee voter board under section 25(b) of this chapter.

(c) After a voter has mailed an absentee ballot to the office of the circuit court clerk, the voter may not recast a ballot, except as provided in:

(1) section 1.5 of this chapter; or

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(2) section 33 of this chapter.

SECTION 14. IC 3-11-10-28, AS AMENDED BY P.L.209-2003, SECTION 148, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 28. (a) A voter voting before an absentee voter board shall mark the voter's ballot in the presence of the board, but not in such a manner that either of the members of the board can see for whom the voter voted, unless the voter requests the help of the board in marking a ballot under IC 3-11-9.

(b) The voter shall then, in the presence of the board, place the ballot in an envelope furnished by the county election board.

(c) The circuit court clerk shall provide, to the extent practicable, the same degree of privacy to absentee voters voting at the office of the circuit court clerk as provided to voters at the polls on election day.

(d) This subsection applies to a voter required to present ~~additional information identifying documentation~~ under ~~IC 3-7-33-4.5; IC 3-5-9~~. If the voter does not present the required ~~additional information identifying documentation~~ before receiving the absentee ballot, the absentee ballot shall be processed as a provisional ballot under IC 3-11.7.

(e) Upon accepting the completed absentee ballot from the voter, the board shall provide the voter with a notice:

(1) listing the documentation the voter may submit ~~to the county voter registration office~~ to comply with ~~IC 3-7-33-4.5; IC 3-5-9~~;

**(2) stating the office to which the documentation must be delivered;** and

(2) stating the address and hours of the ~~county voter registration office~~ **to which the documentation must be delivered.**

SECTION 15. IC 3-11.5-4-12, AS AMENDED BY P.L.209-2003, SECTION 169, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 12. (a) If the absentee ballot counters find under section 11 of this chapter that:

(1) the affidavit is properly executed;

(2) the signatures correspond;

(3) the absentee voter is a qualified voter of the precinct;

(4) the absentee voter is registered and ~~after December 31, 2003~~, is not required to file ~~additional information with the county voter registration office~~ **identifying documentation** under ~~IC 3-7-33-4.5; IC 3-5-9~~;

(5) the absentee voter has not voted in person at the election; and

(6) in case of a primary election, if the absentee voter has not previously voted, the absentee voter has executed the proper declaration relative to age and qualifications and the political

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party with which the absentee voter intends to affiliate;  
the absentee ballot counters shall open the envelope containing the  
absentee ballots so as not to deface or destroy the affidavit and take out  
each ballot enclosed without unfolding or permitting a ballot to be  
unfolded or examined.

(b) ~~This subsection applies after December 31, 2003.~~ If the absentee  
ballot counters find under subsection (a) that the voter has not filed the  
~~additional information identifying documentation~~ required to be filed  
~~with the county voter registration office under IC 3-7-33-4.5, IC 3-5-9,~~  
but that all of the other findings listed under subsection (a) apply, the  
absentee ballot shall be processed as a provisional ballot under  
IC 3-11.7.

(c) The absentee ballot counters shall then deposit the ballots in a  
secure envelope with the name of the precinct set forth on the outside  
of the envelope. After the absentee ballot counters or the county  
election board has made the findings described in subsection (a) or  
section 13 of this chapter for all absentee ballots of the precinct, the  
absentee ballot counters shall remove all the ballots deposited in the  
envelope under this section for counting under IC 3-11.5-5 or  
IC 3-11.5-6.

SECTION 16. IC 3-11.7-5-2, AS AMENDED BY P.L.209-2003,  
SECTION 176, IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Except as provided in section  
5 of this chapter, if the county election board determines that all the  
following apply, a provisional ballot is valid and shall be counted under  
this chapter:

(1) The affidavit executed by the provisional voter under  
IC 3-11.7-2-1 is properly executed.

(2) The provisional voter is a qualified voter of the precinct.

(3) Based on all the information available to the county election  
board, including:

(A) information provided by the provisional voter;

(B) information contained in the county's voter registration  
records; and

(C) information contained in the statewide voter registration  
file;

the provisional voter registered to vote at a registration agency  
under this article on a date within the registration period.

(b) If the provisional voter has provided information regarding the  
registration agency where the provisional voter registered to vote, the  
board shall promptly make an inquiry to the agency regarding the  
alleged registration. The agency shall respond to the board not later

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than noon of the first Friday after the election, indicating whether the agency's records contain any information regarding the registration. If the agency does not respond to the board's inquiry, or if the agency responds that the agency has no record of the alleged registration, the board shall reject the provisional ballot. The board shall endorse the ballot with the word "Rejected" and document on the ballot the inquiry and response, if any, by the agency.

(c) ~~This subsection applies after December 31, 2003.~~ Except as provided in section 5 of this chapter, a provisional ballot cast by a voter described in IC 3-11.7-2-1(b) is valid and shall be counted if the county election board determines under this article that the voter filed the **identifying** documentation required under ~~IC 3-7-33-4.5 and 42 U.S.C. 15483~~ with the county voter registration office **IC 3-5-9** not later than the closing of the polls on election day.

SECTION 17. IC 3-12-8-2, AS AMENDED BY P.L.176-1999, SECTION 100, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. An election may be contested under section 1 of this chapter if a petitioner alleges that one (1) of the following circumstances existed:

- (1) The contestee was ineligible.
- (2) A mistake occurred in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes.
- (3) A mistake occurred in the programming of a voting machine or an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.
- (4) A voting machine or an electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.
- (5) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

**(6) Pervasive fraud, tampering, or misconduct occurred during the election that raises a reasonable doubt regarding the integrity of the results of the election.**

SECTION 18. IC 3-12-8-6, AS AMENDED BY P.L.176-1999, SECTION 101, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) A petition filed under section 5 of this chapter must state the following:

- (1) That the petitioner desires to contest the nomination or election to an office.
- (2) The name of each candidate as set forth on the ballot for the

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election and address of each candidate as set forth in the records of the county election board or election division.

(3) That the petitioner in good faith believes that one (1) or more of the following occurred:

(A) The person declared nominated or elected does not comply with a specific constitutional or statutory requirement set forth in the petition that is applicable to a candidate for the office.

(B) A mistake was made in the printing or distribution of ballots used in the election that makes it impossible to determine which candidate received the highest number of votes cast in the election.

(C) A mistake occurred in the programming of a voting machine or an electronic voting system, making it impossible to determine the candidate who received the highest number of votes.

(D) A voting machine or an electronic voting system malfunctioned, making it impossible to determine the candidate who received the highest number of votes.

(E) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

**(F) Pervasive fraud, tampering, or misconduct that occurred during the election raises a reasonable doubt regarding the integrity of the results of the election.**

(b) A petition stating that the petitioner believes that it is impossible to determine the candidate that received the highest number of votes for one (1) of the reasons described in subsection (a)(3)(B), (a)(3)(C), or (a)(3)(D) must identify each precinct in which:

(1) ballots:

(A) containing the printing mistake; or

(B) distributed by mistake;

were cast;

(2) a mistake occurred in the programming of a voting machine or an electronic voting system; or

(3) a voting machine or an electronic voting system malfunctioned.

(c) A petition stating that the petitioner believes that an act or series of actions described in subsection (a)(3)(E) occurred must identify each precinct or other location in which the act or series of actions occurred to the extent known to the petitioner.

**(d) A petition stating under subsection (a)(3)(F) that the petitioner believes that pervasive fraud, tampering, or misconduct**

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1 occurred during the election must identify each precinct or other  
 2 location in which the fraud, tampering, or misconduct occurred, to  
 3 the extent known to the petitioner.

4 SECTION 19. IC 3-12-8-17 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. (a) A contest shall  
 6 be heard and determined by the court without a jury subject to the  
 7 Indiana Rules of Trial Procedure.

8 (b) The court shall determine the issues raised by the petition and  
 9 answer to the petition.

10 (c) After hearing and determining a petition alleging that a  
 11 candidate is ineligible, the court shall declare as elected or nominated  
 12 the qualified candidate who received the highest number of votes and  
 13 render judgment accordingly.

14 (d) If the court finds that:

- 15 (1) a mistake in the printing or distribution of the ballots;
- 16 (2) a mistake in the programming of a voting machine or an
- 17 electronic voting system; or
- 18 (3) a malfunction of a voting machine or an electronic voting
- 19 system;

20 makes it impossible to determine which candidate received the highest  
 21 number of votes, the court shall order that a special election be  
 22 conducted under IC 3-10-8.

23 (e) ~~The A~~ special election **ordered under subsection (d)** shall be  
 24 conducted in the precincts identified in the petition in which the court  
 25 determines that:

- 26 (1) ballots containing the printing mistake or distributed by
- 27 mistake were cast;
- 28 (2) a mistake occurred in the programming of a voting machine
- 29 or an electronic voting system; or
- 30 (3) a voting machine or an electronic voting system
- 31 malfunctioned.

32 **(f) If the court finds that an act or a series of actions makes it**  
 33 **impossible to determine which candidate received the highest**  
 34 **number of votes, the court shall order that a special election be**  
 35 **conducted under IC 3-10-8. A special election conducted under this**  
 36 **subsection shall be conducted in the precincts ordered by the court.**

37 **(g) If the court finds that pervasive fraud, tampering, or**  
 38 **misconduct that occurred during the election raises a reasonable**  
 39 **doubt regarding the integrity of the results of the election, the**  
 40 **court shall order that a special election be conducted under**  
 41 **IC 3-10-8. A special election conducted under this subsection shall**  
 42 **be conducted in the precincts ordered by the court.**

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SECTION 20. IC 3-12-11-3, AS AMENDED BY P.L.176-1999,  
SECTION 107, IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Each petition for a recount  
filed under section 2 of this chapter must state the following:

- (1) The office for which the petitioner desires a recount.
- (2) The precincts in which the petitioner desires a recount.
- (3) That the individual is entitled to a recount under this chapter  
and that the nomination or election to office at issue was voted  
upon in the precincts specified.
- (4) The name of the candidates as set forth on the ballot for the  
election and address of the candidates as set forth in the records  
of the election division.
- (5) That the petitioner in good faith believes that the votes cast for  
nomination or election to the office at the election in the precincts  
were not correctly counted and returned.
- (6) That the petitioner desires a recount of all of the votes cast for  
nomination or election to the office in the precincts specified.

(b) Each petition for a contest filed under section 2 of this chapter  
must state the following:

- (1) The nomination or election to office that the petitioner  
contests.
- (2) That the individual is entitled to contest an election or a  
nomination to office under this chapter.
- (3) The name of the candidates as set forth on the ballot for the  
election and address of each of the candidates as set forth in the  
records of the election division.
- (4) That the petitioner in good faith believes that one (1) or more  
of the following occurred:
  - (A) The person declared nominated or elected does not comply  
with a specific constitutional or statutory requirement set forth  
in the petition that is applicable to a candidate for the office.
  - (B) A mistake was made in the printing or distribution of  
ballots used in the election that makes it impossible to  
determine which candidate received the highest number of  
votes cast in the election.
  - (C) A mistake occurred in the programming of a voting  
machine or an electronic voting system, making it impossible  
to determine the candidate who received the highest number  
of votes.
  - (D) A voting machine or an electronic voting system  
malfunctioned, making it impossible to determine the  
candidate who received the highest number of votes.

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(E) A deliberate act or series of actions occurred making it impossible to determine the candidate who received the highest number of votes cast in the election.

**(F) Pervasive fraud, tampering, or misconduct that occurred during the election raises a reasonable doubt regarding the integrity of the results of the election.**

(c) A petition stating that the petitioner believes that a mistake described in subsection (b)(4)(B), (b)(4)(C), or (b)(4)(D) has occurred must identify each precinct in which:

(1) ballots:

(A) containing the printing mistake; or

(B) distributed by mistake;

were cast;

(2) a mistake occurred in the programming of a voting machine or an electronic voting system; or

(3) a voting machine or an electronic voting system malfunctioned.

(d) A petition stating that the petitioner believes that an act or series of actions described in subsection (b)(4)(E) occurred must identify each precinct or other location in which the act or series of actions occurred to the extent known to the petitioner.

**(e) A petition stating under subsection (b)(4)(F) that the petitioner believes that pervasive fraud, tampering, or misconduct occurred during the election must identify each precinct or other location in which the fraud, tampering, or misconduct occurred, to the extent known to the petitioner.**

SECTION 21. IC 3-12-11-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 18. (a) When a recount is completed by the state recount commission or its designee, the commission shall:

(1) make and sign a certificate showing the total number of votes received in the precincts by each candidate for nomination or election to the office;

(2) state in its certificate the candidate who received the highest number of votes in the precincts for nomination or election to the office and by what plurality; and

(3) file its certificate with the election division.

(b) When a contest proceeding in which a candidate is alleged to be ineligible is completed by the state recount commission or its designee, the commission shall make a final determination concerning the eligibility of the candidate for nomination or election to the office.

(c) If the state recount commission or its designee determines that

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a mistake was made in the printing or distribution of ballots that makes it impossible to determine which candidate received the highest number of votes cast, the commission shall order that a special election be conducted under IC 3-10-8 in the precincts identified in the petition in which the commission determines that ballots:

- (1) containing the printing mistake; or
- (2) distributed by mistake;

were cast.

**(d) If the state recount commission or its designee determines that an act or a series of actions makes it impossible to determine which candidate received the highest number of votes, the court shall order that a special election be conducted under IC 3-10-8. A special election conducted under this subsection shall be conducted in the precincts ordered by the commission.**

**(e) If the state recount commission or its designee determines that pervasive fraud, tampering, or misconduct that occurred during the election raises a reasonable doubt regarding the integrity of the results of the election, the commission shall order that a special election be conducted under IC 3-10-8. A special election conducted under this subsection shall be conducted in the precincts ordered by the commission.**

SECTION 22. IC 3-14-2-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 31. A person who knowingly or intentionally does any of the following commits a Class D felony:**

**(1) Completes an absentee ballot application for a voter if the person is not:**

**(A) the voter; or**

**(B) authorized under this title to assist the voter in completing the voter's absentee ballot application.**

**(2) Assists a voter in completing the voter's absentee ballot application if the person is not authorized under this title to assist the voter in completing the voter's absentee ballot application.**

**(3) Signs an absentee ballot application for a voter if the person is not authorized under this title to sign the voter's absentee ballot application.**

**(4) Faxes, mails, or hand delivers a completed absentee ballot application to the circuit court clerk or the office of the board of elections and registration (whichever is applicable) if the person is not authorized under this title to fax, mail, or hand deliver the application to the clerk or office.**

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**(5) Completes an absentee ballot application and falsely states information to entitle the voter to vote an absentee ballot by mail under IC 3-11-4-18 and IC 3-11-10-24.**

SECTION 23. IC 35-41-4-2, AS AMENDED BY P.L.1-2002, SECTION 149, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Except as otherwise provided in this section, a prosecution for an offense is barred unless it is commenced:

(1) within five (5) years after the commission of a Class B, Class C, or Class D felony; or

(2) within two (2) years after the commission of a misdemeanor.

(b) A prosecution for a Class B or Class C felony that would otherwise be barred under this section may be commenced within one (1) year after the earlier of the date on which the state:

(1) first discovers the identity of the offender with DNA (deoxyribonucleic acid) evidence; or

(2) could have discovered the identity of the offender with DNA (deoxyribonucleic acid) evidence by the exercise of due diligence.

However, for a Class B or Class C felony in which the state first discovered the identity of an offender with DNA (deoxyribonucleic acid) evidence after the time otherwise allowed for prosecution and before July 1, 2001, the one (1) year period provided in this subsection is extended to July 1, 2002.

(c) A prosecution for a Class A felony may be commenced at any time.

(d) A prosecution for murder may be commenced:

(1) at any time; and

(2) regardless of the amount of time that passes between:

(A) the date a person allegedly commits the elements of murder; and

(B) the date the alleged victim of the murder dies.

(e) A prosecution for the following offenses is barred unless commenced before the date that the alleged victim of the offense reaches thirty-one (31) years of age:

(1) IC 35-42-4-3(a) (Child molesting).

(2) IC 35-42-4-5 (Vicarious sexual gratification).

(3) IC 35-42-4-6 (Child solicitation).

(4) IC 35-42-4-7 (Child seduction).

(5) IC 35-46-1-3 (Incest).

(f) Notwithstanding subsection (e)(1), a prosecution for child molesting under IC 35-42-4-3(c) or IC 35-42-4-3(d) where a person who is at least sixteen (16) years of age allegedly commits the offense

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1 against a child who is not more than two (2) years younger than the  
2 older person, is barred unless commenced within five (5) years after the  
3 commission of the offense.

4 (g) A prosecution for forgery of an instrument for payment of  
5 money, or for the uttering of a forged instrument, under IC 35-43-5-2,  
6 is barred unless it is commenced within five (5) years after the maturity  
7 of the instrument.

8 (h) If a complaint, indictment, or information is dismissed because  
9 of an error, defect, insufficiency, or irregularity, a new prosecution may  
10 be commenced within ninety (90) days after the dismissal even if the  
11 period of limitation has expired at the time of dismissal, or will expire  
12 within ninety (90) days after the dismissal.

13 (i) The period within which a prosecution must be commenced does  
14 not include any period in which:

15 (1) the accused person is not usually and publicly resident in  
16 Indiana or so conceals himself that process cannot be served on  
17 him;

18 (2) the accused person conceals evidence of the offense, and  
19 evidence sufficient to charge him with that offense is unknown to  
20 the prosecuting authority and could not have been discovered by  
21 that authority by exercise of due diligence; or

22 (3) the accused person is a person elected or appointed to office  
23 under statute or constitution, if the offense charged is theft or  
24 conversion of public funds or bribery while in public office.

25 (j) For purposes of tolling the period of limitation only, a  
26 prosecution is considered commenced on the earliest of these dates:

27 (1) The date of filing of an indictment, information, or complaint  
28 before a court having jurisdiction.

29 (2) The date of issuance of a valid arrest warrant.

30 (3) The date of arrest of the accused person by a law enforcement  
31 officer without a warrant, if the officer has authority to make the  
32 arrest.

33 (k) A prosecution is considered timely commenced for any offense  
34 to which the defendant enters a plea of guilty, notwithstanding that the  
35 period of limitation has expired.

36 **(l) A prosecution for a felony under IC 3-14-2 is barred unless**  
37 **the prosecution is commenced not more than seven (7) years after**  
38 **the offense is committed.**

39 SECTION 24. [EFFECTIVE JULY 1, 2004]: IC 35-41-4-2, as  
40 amended by this act, applies only to offenses committed after June  
41 30, 2004.

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